United Nations A/HRC/37/NGO/29

General Assembly

Distr.: General
6 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Khiam Rehabilitation Center for Victims of Torture, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-01722(E)
1801722

Please recycle

Bahrain: 27 legal loopholes in a military trial of civilian victims, 6 of whom were sentenced to death

On December 25, 2017, the military court issued verdicts against 18 defendants, condemning 6 of them and sentencing them to death, and to 15 years in prison, and stripping them of their Bahraini nationality. Seven other defendants were sentenced to seven years in prison and stripping them of their Bahraini nationality, whereas five defendants were acquitted. Their trial violated the standards of fair trials, and relied on confessions extracted under torture. This report reveals some of the violations.

The victims in this trial were subjected to 11 violations, including torture with electric shock, solitary confinement and enforced disappearance. Communications engineer Sayed Alawi Hussein Alawi, who is the personal escort of Ayatollah Sheikh Isa Qassim, and Sayed Fadhel Abbas were forcibly disappeared for nearly a year, while Mohammed Al-Shehabi and human rights activist Mohammed Al-Motaghawi were forcibly disappeared for months. Some of the lawyers and the families of the defendants were threatened to be subjected to degrading treatment if they revealed the violations to the media or international human rights organizations. In addition, the military judiciary hid the report of the forensic doctor which proves that Sayed Alawi Hussein Alawi was tortured.

Human rights activist and head of Liberties and Human Rights Department at Al-Wefaq National Islamic Society, Mohammed Al-Motaghawi, was arrested on May 23, 2017 when excessive force was used to break up the peaceful gathering in Al-Duraz area. He was tortured while he was arbitrarily detained for hours in front of the house of Ayatollah Sheikh Isa Qassim, the highest religious authority for Shiites in Bahrain. Moreover, one of the defendants told his family that he had no choice other than confessing because he would face death due to torture with electric shocks if he did not confess.

The plaintiff in this case, the commander-in-chief of the Bahrain Defense Force, oversees the appointment of military judges and the distribution of positions. Therefore, the lawyers demanded that the case be transferred to the civil judiciary because such case is not in the jurisdiction of the military judiciary, but the judge refused. In 2011, the report of the Independent Commission of Inquiry condemned the sentences handed down to civilians by the military judiciary, and some of the defendants were tortured before a judge in the court in 2011 and no legal liability was inflicted upon the perpetrators.

At the second hearing, on October 30, 2017, the defendants were surprised by the charge of planning an assassination that was brought against them, since they were not interrogated based upon it; in addition, the court refused the request of the lawyers to receive a copy of the case file. Some defendants were not allowed to meet with their lawyers except when they met them for the first time at the third hearing on November 2, 2017 for five minutes.

1. Violations by the military judiciary:

1. The alleged incident took place before the amendment of the Military Judiciary Law, which makes the civil judiciary has jurisdiction over the case.
2. Judges in the military courts are appointed by the commander-in-chief of the army, and he is the plaintiff (allegedly) in the act of attempted murder (assassination attempt), which creates a conflict of interest in the bench, and according to the law, every judge that has a conflict in the case under consideration must withdraw.
3. Many of the charges are not related to the alleged incident, which requires the law to separate the cases. Charges such as gathering, riots or placing objects that simulate the shape of bombs are not legally linked to the alleged fundamental charge of attempted assassination.
4- On April 2, 2017, Lieutenant Colonel Mohammed Rashid Al-Binali started the investigation, while the defendants Sayed Fadhel and Saved Alawi were detained prior to these investigations.
5. The secret prosecution witnesses that the prosecution and the investigating officer relied on were not at the location of the alleged incident, according to what officer Mohammed Rashid Al-Binali told the court.
6. The Research and Investigation Officer, Mohammed Rashid Al-Binali, told the court that he relied on the confessions of the defendants in obtaining information and did not obtain evidence other than these confessions.

7. The Court relied on the testimony of secret witnesses, whose statements were not written down in the case file by the prosecution, and they did not testify before the court, which makes the judgment void due to the adoption of evidence that was not brought up for discussion at the trial.
8. The case file of the alleged charge did not address the stage of execution and all that was discussed were the defendants' confessions that were extracted under torture about planning the assassination attempt only. (So it is just an idea).
9 - The impossibility of training to shoot using "fire extinguishers" in a cemetery surrounded by the houses of the residents.
10. How can civilians train a military soldier to shoot?
11- Is it possible to be an assassination by a fire extinguisher and skewers?
12 - The alleged incident of training to shoot by fire extinguishers and iron skewers was dated 4/3/2016 and 6/20/2016.
13. The Military Prosecution found that the confession of Muhammad al-Motaghawi about the incident of planning by Muhammad Kadhem Zain al-Din (the Martyr) and Muhammad al-Motaghawi occurred on 8/4/2015. However, there are official papers from the enforcement prosecution proving that Muhammad al-Motaghawi was in custody over at the time.
14. The Military Prosecution found that Muhammad al-Motaghawi met with the defendant Muhammad Kadhem Zain al-Din (Martyr) on 8/6/2015, but the enforcement prosecution proved that the defendant Mohammed al-Motaghawi was in custody over another case at the time.
15. The Military Prosecution found that Muhammad al-Motaghawi met with the defendants Mohammed Kadhem Zain al-Din (Martyr) and Sayed Alawi on May 13, 2016 and on May 14, 2016, while the Budaiya police station confirmed that the defendant Mohammed al-Motaghawi was in custody over another case on these two dates.
16. The Military Prosecution found that the defendant Mohammed al-Motaghawi gave Sayed Fadhel 50 dinars on May 13, 2016 for the assassination operation, but the Budaiya police station confirmed that Mohammed al-Motaghawi was being held in custody over another case.
17. The prosecution stated in the case file that the assassination operation costed the defendants 2000 dinars!!
18. The Military Prosecution stated in the case file that defendant Mohammed al-Motaghawi had met with Sheikh Ali al-Karbabadi in April and May 2017, while Sheikh al-Karbabadi had been outside Bahrain since before that time.
19. The Military Prosecution proved two contradictory things. First, it said that Mohammed al-Motaghawi said that he had not seen and does not know the first and second defendants, but in another record, the prosecution proved that Mohammed al-Motaghawi had given Sayed Fadhel an amount of money!!
20. The Military Prosecution says that the idea of assassinating the Commander-in-Chief is present since 2015. However, the first defendant, Mubarak Adel, was not a soldier at the time and had not joined the military! Then how was there planning with a soldier while he had not yet joined the military?!
21. In 2015, defendant Mubarak Adel was detained on criminal charges (non-political) and yet he was accepted in the military in 2016, and later was arrested at the camp using drugs before the date of the alleged incident!
22 - Mubarak Adel was at the training camp from January 2016 until April 2016, while the first alleged incidents of training to shoot coincided with his presence at the army camp and the second incident happened after he graduated from the army camp!!
23 - In a previous case that is registered by the military prosecution, defendant Mubarak Adel was accused of possession and abuse of drugs (cannabis) and was arrested since August 2016!!
24. The Military Prosecution stated in the indictment that the secret witnesses had been monitoring the defendants since 2015, while the investigations began on 4/2/2107!!
25- There is no date in the case file of defendant Mubarak Adel (who is accused of attempted murder) specifying when the incident of attempted murder occurred!!
26. All defendants (except Mubarak Adel) were not charged with attempted murder, but with planning!! However, the Bahraini Penal Code does not state that the death penalty shall be applied for such charges!!
27. The Military Prosecution did not inspect the Duraz cemetery and did not order the Crime Scene Division to inspect the alleged training site!! Also, the Military Prosecution did not provide documents or reports on the alleged crime scene.

Recommendations

1. The Member States of the Human Rights Council urge Bahrain again to abolish the death penalty, and repeat the same recommendations of the 2017 UPR. The countries are the following: France, Portugal, Angola, Sweden, Norway, Germany, Montenegro, Spain, Bulgaria, Australia, Austria, Luxembourg, Lithuania, Italy, Argentina, Chile, and Belgium.

---

* Bahrain Forum for Human Rights (BFHR), an NGO without consultative status, also shares the views expressed in this statement.